

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JUDY WETHINGTON, <i>et al.</i> ,	:	
	:	Case No. 1:01cv441
Plaintiffs,	:	
	:	Judge S. Arthur Spiegel
v.	:	
	:	
PURDUE PHARMA, L.P., <i>et al.</i> ,	:	
	:	
Defendants.	:	

**PURDUE DEFENDANTS’ NOTICE OF  
SUPPLEMENTAL AUTHORITY IN OPPOSITION  
TO PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

Defendants Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Purdue Pharmaceuticals L.P., The P.F. Laboratories, Inc., and PRA Holdings, Inc. (“Purdue”) hereby give notice of supplemental authority, *In Re Baycol Product Litigation*, MDL No. 1431 (D. Minn. Sept. 17, 2003) (copy attached).

In *Baycol*, the plaintiffs asserted product liability claims arising out of the defendants’ marketing of the prescription drug Baycol and asked Judge Davis to certify personal injury, medical monitoring, and refund classes in the cases consolidated before him pursuant to the order of the Judicial Panel on Multidistrict Litigation. The district court rejected certification of any class. In doing so, the court noted the weight of authorities that have denied certification for product liability classes in prescription drug cases. *Id.* at 7-8 (“Many courts presiding over similar products liability case involving prescription drugs have denied similar requests for class certification. . . . To date, no Court of Appeals decision has approved class certification of an action involving prescription drugs.”) Notwithstanding the plaintiffs’ assertion that their claims were typical because they arose “from a single product and the same conduct,” the court held

that the existence of “individual issues such as injury, causation, the learned intermediary doctrine and comparative fault” precluded a finding of typicality. *Id.* at 12. Additionally, the court specifically rejected Rule 23(c)(4) issue certification in view of the numerous individual issues that were inextricably intertwined with any common issues. *Id.* at 22.

Accordingly, Purdue respectfully submits the *Baycol* decision as further support for its request that the Court deny plaintiffs’ motion for class certification in this action.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2003, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I further certify that I have mailed by regular U.S. mail, postage prepaid, the foregoing to the following non-CM/ECF participants:

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